Henrik Mosesi (SBN: 189672)
PILLAR LAW GROUP, APLC
150 S. Rodeo Drive, Suite 260
Beverly Hills, CA 90212
[phone]: (310) 999-1000
henry@pillar.law
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO

MALIBU MEDIA, LLC, Plaintiff, vs. KEVIN PETERSON, Defendant.	Case Number: 3:16-CV-00786-JLS-NLS **PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS DEFENDANT'S COUNTERCLAIM**
KEVIN PETERSON Counterclaimaint v. MALIBU MEDIA, LLC Counterdefendant	

PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS DEFENDANT'S COUNTERCLAIM

I. INTRODUCTION

As set forth in Plaintiff's Motion to Dismiss, Defendant's Counterclaim for Declaratory Relief is redundant and unnecessary and therefore should be dismissed. Defendant provides no argument otherwise. Indeed, Defendant's only argument for his counterclaim is so that he may receive attorney's fees should Plaintiff dismiss its case. This is not a valid reason to assert an otherwise meaningless counterclaim. Under Fed. R. Civ. P. 41(a)(2), Plaintiff cannot dismiss its case without Court approval, and upon such conditions this Court deems just, including, if appropriate an award of attorneys' fees. Defendant's counterclaim is unnecessary because the Federal Rules already provide Defendant with the necessary tools for his protection. For these reasons, as explained more fully below, the Court should dismiss Defendant's counterclaim.

II. ARGUMENT

A. Defendant's Counterclaim is Redundant

Defendant's counterclaim is repetitious and unnecessary. Indeed, the "purpose of the Declaratory Judgment Act is 'to relieve potential defendants from the Damoclean threat of impending litigation which a harassing adversary might brandish, while initiating suit at his leisure -- or never.'" *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1555 (9th Cir. 1990) (citations omitted); *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 269 F. Supp. 2d 1213, 1225-26 (C.D. Cal. 2003) ("The Act was intended to afford relief to those victimized by "scarecrow" litigation (i.e., circumstances in which a potential plaintiff immobilizes others with the mere threat of litigation), by allowing district courts to declare the legal relations of affected parties" (parenthetical in original)). "Separately litigating [a] defense in a declaratory posture would not serve the purposes of declaratory relief [and would be contrary to the] strong interests of judicial economy in avoiding needless duplication…." *Id.* at 1226.

Since Plaintiff's Complaint and Defendant's Affirmative Defenses already frame and will resolve Defendant's liability, the counterclaim is redundant and unnecessary, and should be dismissed. "When a defendant counterclaims for 'declaratory judgment of non-infringement[, it] is no more than a restatement of Defendant's general denial of liability. This is not a pleading that complies with [minimum pleading requirements]." *Malibu Media, LLC v. Doe*, No. 2:14-cv-821, 2015 U.S. Dist. LEXIS 13173, at *3 (S.D. Ohio Feb. 4, 2015); "Defendant seeks no relief in his counterclaim other than that which would have the opposite effect of the relief sought in the Complaint. As such, his counterclaim is redundant and unnecessary." *Malibu Media, LLC v. Batz*, Civil Action No. 12-cv-01953-WYD-MEH, 2013 U.S. Dist. LEXIS 84709, at *10 (D. Colo. May 17, 2013).

B. Defendant Has Recourse Under the Federal Rules of Civil Procedure

Defendant's only argument for not dismissing his counterclaim is that Defendant "seeks to prevent Malibu Media from seeking an 'easy exit'" and his counterclaim serves that purpose. *See* CM/ECF 22. However, the Federal Rules of Civil Procedure have built in safe guards to ensure that once a case enters into litigation, there is no easy exit. A declaratory judgment adds nothing to the safeguards already designed in the Federal Rules. Under Fed. R. Civ. P. 41, Plaintiff may only voluntary dismiss Defendant on its own "before the opposing party serves either an answer or a motion for summary judgment." *See* Fed. R. Civ. P. 41(a). By the rule's very nature, Plaintiff cannot "cut and run." If that was Plaintiff's actual desire, Plaintiff would not have served Defendant in the first place. Here, Plaintiff is litigating because it believes it will prevail on the merits.

Courts have followed this rationale. "The issue of copyright infringement will be decided by this court regardless of the declaratory judgment claim unless the parties stipulate to settlement, or the Recording Companies move to voluntarily withdraw their complaint and the court so orders pursuant to Rule 41(a)(2), Fed. R. Civ. P. Therefore, Duty's claim for a declaratory judgment is redundant and unnecessary, and the Recording Companies motion to dismiss it is granted (doc. 21)." *Interscope Records v. Duty*, No. 05-CV-3744-PHX-FJM, 2006 U.S. Dist. LEXIS 20214, at *10-11 (D. Ariz. Apr. 14, 2006) (emphasis added). "If and when the defendants prevail in these cases they are free to move for an award of attorney's fees under

Section 505. Until then, however, the question of whether they are entitled to attorney's fees will not be ripe, and thus it is not a proper subject of a counterclaim. Should Plaintiff move to withdraw its complaint at this stage, it would need an order from the Court, which may be conditioned on paying Defendant his fees, or other relief." *Maverick Recording Co. v. Chowdhury,* Civil Action No. CV-07cv200 (DGT), 2008 U.S. Dist. LEXIS 63783, at *3 (E.D.N.Y. Aug. 19, 2008) (emphasis added).

As stated in *Maverick*, because Defendant has filed an answer, Plaintiff's complaint cannot be dismissed without an order from the Court, which may be conditioned upon paying Defendant fees or other relief. *See also Flex Prods. v. Valley Slurry Seal Co.*, No. 09cv2220-WQH-JMA, 2010 U.S. Dist. LEXIS 60844, at *12 (S.D. Cal. June 16, 2010) ("Rule 41 vests the district court with discretion to dismiss an action at the plaintiff's instance upon such terms and conditions as the court deems proper.") This is the exact relief Defendant seeks by filing a counterclaim.

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court dismiss Defendant's counterclaim.

Respectfully submitted,

PILLAR LAW GROUP, APLC

/s/ *Henrik Mosesi*
Henrik Mosesi (SBN: 189672)
PILLAR LAW GROUP, APLC
150 S. Rodeo Drive, Suite 260
Beverly Hills, CA 90212
[phone]: (310) 999-1000
henry@pillar.law
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2016, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

By: */s/ Henrik Mosesi*